

AMENDED IN SENATE MAY 17, 2006

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SENATE BILL

No. 1846

**Introduced by Committee on Natural Resources and Water
(Senators Kuehl (Chair), Aanestad, Kehoe, Lowenthal,
Machado, Margett, and Migden)**

March 7, 2006

An act to amend Sections 6309, 6313, and 6314 of the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1846, as amended, Committee on Natural Resources and Water. Public resources: ~~Underwater~~ *underwater* salvage operation.

(1) Under existing law, the State Lands Commission administers the Shipwreck and Historic Maritime Resources Program, as defined, regulating salvage operations over and upon all tide and submerged lands of the state. Existing law requires a person conducting a salvage operation, as defined, on tide and submerged lands to obtain a permit from the commission, and authorizes the commission to designate persons, paid for by the permitholder, to observe all salvage operations. Existing law authorizes the commission to revoke the permit, after notice to the permitholder, if the commission finds that the permitholder failed to comply with the terms of the permit or other applicable provision of law.

This bill would, in addition, authorize the commission to issue a permit for the search, exploration, or recovery of nonhistoric vessels, aircraft, or submerged objects, and for the search, archaeological investigation, and recovery of historic vessels, aircraft, or other submerged historic resources, as defined, on tide and submerged

lands. The bill would require the commission to issue a permit based on the commission's evaluation of the project and its probable impact on the site or objective, and the impact on the state submerged lands. The bill would authorize the commission to require the permitholder to provide a reliable communication system for the observer to communicate with the commission. The bill would authorize the executive officer of the commission, after notice to the permitholder and time to correct, to issue a stop work order if the observer determines that activities conducted on the project are not within the terms of the permit. The bill requires the executive officer to hold a hearing within 3 business days of the issuance of a written notice of the stop work order.

(2) Existing law authorizes the commission to grant a permit for salvage operations to specified entities that demonstrate the capability to carry out salvage operations. Existing law requires a person proposing to conduct a salvage operation to provide to the commission a detailed plan for the protection and preservation of the site or objects, or materials removed from the site consistent with contemporary professional standards of archaeological data recovery.

This bill would, instead, authorize the commission to grant a permit when the proposed activity is justified by an educational, scientific, or cultural purpose, or the need to protect the integrity of the site or the resource and grant a permit to specified entities that demonstrate the capability of properly carrying out archaeological investigations. The bill would require a person proposing such activity to submit a detailed project design that provides information, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6309 of the Public Resources Code is
- 2 amended to read:
- 3 6309. (a) The commission shall administer the Shipwreck
- 4 and Historic Maritime Resources Program, which consists of the
- 5 activities of the commission pursuant to this section and Sections
- 6 6313 and 6314.
- 7 (b) The commission has exclusive jurisdiction with respect to
- 8 salvage operations over and upon all tide and submerged lands of
- 9 the state. The commission may grant the privilege of conducting

1 salvage operations upon or over those lands by the issuance of
2 permits. The commission may adopt rules and regulations in
3 connection with applications for those permits, and the
4 operations to be conducted in the salvage operation, that the
5 commission determines to be necessary to protect those lands and
6 the uses and purposes reserved to the people of the state.

7 (c) The commission may issue permits for salvage on granted
8 tide and submerged lands only after consultation with the grantee
9 and a determination by the commission that the proposed salvage
10 operation is not inconsistent with the purposes of the grant.

11 (d) A salvage permit shall be required of a person or entity to
12 conduct any salvage operation. As used in this section and
13 Section 6313, “salvage operation” means any activity, including
14 search by electronic means, or exploration or excavation using
15 tools or mechanical devices, with the objective of locating, and
16 recovering or removing vessels, aircraft, or any other cultural
17 object from the surface or subsurface of state submerged lands.

18 (e) Salvage permits shall be issued for one year, with the
19 option to renew the permit for additional one-year periods at the
20 discretion of the commission upon a showing that the
21 permitholder has diligently and lawfully pursued the permitted
22 activity and has achieved to a reasonable extent the purpose for
23 which the permit was issued.

24 (f) The commission may require that a person designated by
25 the commission and paid by the permitholder be present during
26 each phase of a salvage operation to observe and monitor
27 compliance with the terms of the permit. The permitholder shall,
28 upon the request of the commission, provide or pay for a reliable
29 communication system for the observer to maintain contact with
30 the office of the commission while on the salvage site.

31 (g) The commission may issue a permit for the search or
32 recovery of nonhistoric vessels, aircraft, or submerged objects,
33 and for the search, archaeological investigation, and recovery of
34 historic vessels, aircraft, or other submerged historic resources as
35 defined in subdivision (b) of Section 6313. The commission shall
36 determine the appropriate type of permit to issue based on its
37 evaluation of the salvage project and the project’s probable
38 impact on the site or objective, and the impact on the state
39 submerged lands. The commission shall not require a permit for
40 any recreational diving activity which does not disturb the

1 subsurface or remove objects or materials from a submerged
2 archaeological site or submerged historic resource as defined in
3 Section 6313.

4 (h) (1) Permits may be revoked by the commission, after
5 notice to the permitholder, at any time the commission finds that
6 the permitholder has failed to comply with the terms of the
7 permit or any law or regulation governing the permitted activity.

8 (2) A stop work order may be issued by the executive officer
9 of the commission at the request of the onsite observer provided
10 by subdivision (f), if the observer determines that the activities of
11 the permitholder are not within the permitted activity. A stop
12 work order shall be issued after the nonpermitted activity is
13 brought to the attention of the person in charge of the onsite
14 operation and that person fails or refuses after sufficient time and
15 opportunity to change or correct the activity. Written notice of
16 the stop work order shall be given to the person in charge of the
17 onsite activity and a hearing by the executive officer or his or her
18 ~~designate~~ *designee* shall be provided to the permitholder within
19 three business days.

20 (3) After the hearing the commission may seek enforcement
21 of, or the permitholder may seek relief from, the stop work order
22 in the superior court in the county in which the activity is being
23 conducted. The relief may include damages for failure to comply
24 with the stop work order. The commission may deny an
25 application for a permit when it finds that the applicant has failed
26 to provide, for a period of 60 days, information specifically
27 requested by the commission which is necessary to complete the
28 application.

29 (i) When title to the objects, including a vessel, to be
30 recovered is vested in the state, the commission shall provide for
31 fair compensation to the permitholder in terms of a percentage of
32 the reasonable cash value, or a fair share, of the objects
33 recovered. The reasonable cash value of the objects shall be
34 determined by appraisal by qualified experts selected by the
35 commission. The commission shall determine the amount
36 constituting fair compensation, taking into consideration the
37 circumstances of each case. Title to all objects recovered is
38 retained by the state until it is released by the commission.

39 (j) The commission may fix and collect reasonable fees and
40 costs for the processing and issuance of permits under this

1 section. The applicant may be required to post a bond to ~~insure~~
2 *ensure* the completion of the project or payment of costs, or to
3 deposit funds with the commission sufficient to cover costs and
4 expenses chargeable to the applicant by law or by an agreement
5 for reimbursement. *If a bond is posted, the bond shall be held by*
6 *the commission and shall be sufficient to cover all potential costs*
7 *associated with the project, including preserving, restoring, and*
8 *protecting the site and its associated finds.*

9 SEC. 2. Section 6313 of the Public Resources Code is
10 amended to read:

11 6313. (a) The title to all abandoned shipwrecks and all
12 archaeological sites and historic resources on or in the tide and
13 submerged lands of California is vested in the state. All
14 abandoned shipwrecks and all submerged archaeological sites
15 and submerged historic resources of the state shall be in the
16 custody and subject to the control of the commission for the
17 benefit of the people of the state of California. The commission
18 may transfer title, custody, or control to other state agencies or
19 recognized scientific or educational organizations, institutions, or
20 individuals by appropriate legal conveyance.

21 (b) As used in this section, “submerged archaeological site”
22 and “submerged historic resource,” shall be given the broadest
23 possible meaning, to include any submerged object, structure,
24 building, watercraft, aircraft, or vessel and any associated cargo,
25 armament, tackle, fixture, human remains, or remnant of those
26 objects, or a site, area, person, or place, which is historically or
27 archaeologically significant, or significant in the prehistory or
28 history or exploration, settlement, engineering, commerce,
29 militarism, recreation, or culture of California and that is partially
30 or wholly embedded in or resting on state submerged or tidal
31 lands.

32 (c) Sites with archaeological or historic significance shall be
33 determined by reference to their eligibility for inclusion in the
34 National Register of Historic Places or the California Register of
35 Historical Resources. Any submerged archaeological site or
36 submerged historic resource remaining in state waters for more
37 than 50 years shall be presumed to be archaeologically or
38 historically significant. The commission, with the assistance of
39 the State Office of Historic Preservation, shall identify, compile,
40 and maintain an inventory of shipwreck sites, or sites of

1 archaeological or historical significance and shall make the
2 listing available to the public.

3 (d) Permits for salvage operations involving submerged
4 archaeological sites or submerged historic resources may be
5 granted by the commission when the proposed activity is justified
6 by an educational, scientific, or cultural purpose, or the need to
7 protect the integrity of the site or the resource. The commission
8 may issue permits to individuals or organizations representing
9 museums, universities, colleges, or other recognized scientific or
10 educational institutions and individuals that demonstrate the
11 capability to properly carry out archaeological investigations.
12 The commission may deny an application for a permit to an
13 applicant who the commission determines has not demonstrated
14 the ability to properly conduct an archaeological investigation or
15 salvage activities. The commission may consider the applicant's
16 past conduct with regard to salvage operations when making this
17 determination.

18 (e) (1) Prior to the issuance of a permit under subdivision (d),
19 the applicant shall provide to the commission a detailed project
20 design that includes all of the following:

21 (A) The purpose of the project.

22 (B) A description of the methodology, technology, and
23 equipment to be employed.

24 (C) The project funding source.

25 (D) A timetable for the completion of the project.

26 (E) The composition, qualifications, and responsibilities of the
27 project team.

28 (F) A conservation and curation plan, if applicable.

29 (G) A plan to document all phases of the project.

30 (H) A safety plan.

31 (I) An outline and timetable for preparation and submission of
32 progress reports and a final report.

33 (J) Other information that the commission deems necessary to
34 properly evaluate the application.

35 (2) All activities permitted under subdivision (d) or required
36 by this subdivision shall be accomplished under the direct
37 supervision of a person who meets the qualifications required of
38 a professional marine archaeologist.

39 (f) The commission shall forward applications for permits for
40 archaeological investigation or excavation and recovery of

1 historic vessels, aircraft, or other submerged historic resources in
2 state waters, including the information required by subdivision
3 (e), to the State Office of Historic Preservation, and may provide
4 the applications and information to other qualified organizations
5 and individuals, as appropriate, for technical review of the
6 project design and recommendation concerning the preservation
7 and protection of the site or resource.

8 (g) The commission shall provide for the disposition of all
9 objects or other materials recovered, which may include
10 provisions for display in museums, educational institutions, and
11 other appropriate locations available to the public.

12 (h) The commission may contract with persons, firms,
13 corporations, or institutions who, for the privilege of having
14 temporary possession of recovered archaeological resources, will
15 advance to the commission the money necessary to conduct
16 salvage operations or to purchase from a permitholder, from his
17 or her fair share, archaeological resources which the commission
18 determines should remain the property of the state. A contract
19 may be made only on the condition that the commission may, at
20 any time, repay the money advanced, without interest or
21 additional charges of any kind, and recover possession of the
22 resources. During the time the resources are in the possession of
23 the entity advancing the money, the resources shall be available
24 for viewing by the general public at a nominal fee or without
25 charge.

26 (i) The commission may also contract with other state
27 agencies, qualified public or private institutions, local
28 governments, or individuals for public display of the
29 archaeological resources recovered. The commission shall
30 require assurances that appropriate security, qualified personnel,
31 insurance, and facilities for preservation, restoration, and display
32 of the resources loaned are provided under the contract.

33 SEC. 3. Section 6314 of the Public Resources Code is
34 amended to read:

35 6314. (a) A person who removes, without authorization from
36 the commission, or a person who destroys or damages an
37 archaeological site or any historic resource, that is located on or
38 in the submerged lands of, and which is the property of, the state,
39 is guilty of a misdemeanor and is punishable by imprisonment in

1 the county jail not to exceed six months or a fine not to exceed
2 five thousand dollars (\$5,000), or by both.

3 (b) The commission, or, at its request, the Attorney General or
4 a district attorney in whose jurisdiction the violation occurred,
5 may seek civil damages for the damage, loss, or destruction of
6 abandoned shipwrecks, their gear or cargo, or any archaeological
7 site or historic resource located on or in submerged lands of the
8 state. A vessel used to damage, destroy, or cause the loss of, any
9 such shipwreck or archaeological site or historic resource is
10 subject to a proceeding in rem by the state for the costs and
11 damages resulting from that damage, destruction, or loss.
12 Enforcement may include, where appropriate, a restraining order
13 or injunctive relief to restrain and enjoin violations or threatened
14 violations of Section 6309, Section 6313, or this section and for
15 the return of items taken in violation of these sections.

16 (c) An artifact, object, or material which has been removed
17 from a state submerged archaeological site or submerged historic
18 resource, as specified in subdivision (a), and which is found in
19 any watercraft occupied by persons who do not hold a permit as
20 required by Section 6309 or Section 6313 or other reasonable
21 evidence of legal possession is ~~prima-facie~~ *facie* evidence of
22 violation of that section and the artifact, object, or material may
23 be confiscated by any state, federal, or local law enforcement
24 officer. Artifacts, objects, or materials confiscated under this
25 section shall be returned to the person claiming ownership, upon
26 proof of ownership or legal right to possession, within 30 days of
27 their confiscation, unless a prosecuting attorney determines that
28 they are required as evidence in the prosecution of a criminal
29 violation.

30 (d) In a case in which a district attorney, at the request of the
31 commission, or with its concurrence, enforces subdivision (a),
32 the commission shall, notwithstanding Section 1463 of the Penal
33 Code, be entitled to an equal division of the fine imposed.

34 (e) All state and local law enforcement agencies and officers
35 are directed to assist in enforcing this section, and are requested
36 to work with and seek the cooperation of federal law
37 enforcement agencies, including deputizing federal officers when
38 appropriate.

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